

Before the
Federal Communications Commission
Washington, D.C. 20554

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MM Docket No. 95-7

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.202(b), RM-8561
Table of Allotments,
FM Broadcast Stations.
(Coleman, Sebewaing and
Tuscola, Michigan)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: January 12, 1995; Released: January 23, 1995

Comment Date: March 16, 1995

Reply Comment Date: March 31, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Faircom Flint, Inc. ("petitioner"), requesting the substitution of Channel 268A for Channel 269A at Tuscola, Michigan, and modification of the license for Station WBBN to specify operation on Channel 268A. Petitioner also requests substitution of Channel 269A for Channel 268A, Coleman, Michigan, and substitution of Channel 281A for vacant Channel 267A at Sebewaing, Michigan. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel at Tuscola.

2. In support of its proposal, petitioner states that Station WBBN, Tuscola and Station WPRJ, Coleman, are currently restricted to operating with three kilowatts. Further, Station WBBN, operating on Channel 269A at Tuscola, receives interference in its normal service area from Station WILS-FM, Flint, Michigan, and Station WDET, Detroit, Michigan. According to petitioner, that by exchanging the channel allotments at Tuscola and Coleman, both stations will be able to operate with six kilowatts. However, the vacant allotment at Sebewaing will need to be changed, to accommodate these substitutions. Petitioner points out that in this case, improvements must be afforded to both Stations WBBN and WPRJ or there can be no improvements at all as this exchange of channels at Tuscola and Coleman would appear to qualify as an incompatible channel swap.¹

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it will reimburse the affected

station(s) for costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station WPRJ, Coleman, Michigan, for the reasonable costs in changing frequency if the substitution at Tuscola is granted.

4. We believe petitioner's proposal warrants consideration because the proposed substitutions will provide expanded reception service to Tuscola and Coleman. Channel 268A can be allotted to Tuscola, Michigan, in compliance with the Commission's spacing requirements at a site 10.4 kilometers (6.5 miles) southwest of the community.² We shall propose to modify the license for Station WBBN, Channel 269A, to specify operation on Channel 268A in accordance with Section 1.420(g) of the Commission's Rules. Channel 269A can be allotted to Coleman, Michigan, in compliance with the Commission's spacing requirements at a site 11.3 kilometers (7 miles) northeast of the community.³ To accommodate the substitution at Tuscola and Coleman, we shall also propose to substitute Channel 281A for vacant Channel 267A at Sebewaing, Michigan. The allotment of Channel 281A can be made at Sebewaing at a site 10.1 kilometers (6.3 miles) southwest of the community.⁴ Since the communities of Tuscola, Coleman and Sebewaing are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for these allotments. We will request concurrence for the allotment of Channel 268A at Tuscola as a specially negotiated short-spaced allotment as our study indicates that the allotment is short-spaced to Channel 268A, Sarnia, Ontario, Canada.

5. We shall also seek comments as to whether we should delete Channel 267A at Sebewaing, Michigan, to accommodate the substitutions at Tuscola and Coleman. Originally, Channel 280A was allotted to Sebewaing in MM Docket No.81-854, 47 FR 43697, October 4, 1982. Channel 267A was substituted for Channel 280A in MM Docket 89-38. See 4 FCC Rcd 8012 (1989). Although Family Stations, Inc. did have a construction permit for Station WWMI, Channel 267A, Sebewaing, the construction permit was forfeited and the call sign deleted on July 3, 1989. Since the construction permit was forfeited, the channel is considered vacant. If, however, comments are filed during the comment cycle in this proceeding stating an intention to file an application for the channel, upon termination of this proceeding, a filing window will be opened for Channel 281A at Sebewaing. It is Commission policy not to delete a channel in which an interest has been expressed. If no interest is expressed in retaining a channel in the community, we shall delete the channel at Sebewaing.

6. In view of the foregoing, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

¹ See *Blair Nebraska, et al*, 8 FCC Rcd 4086 (1993).

² The coordinates for Channel 268A at Tuscola are 43-16-02 and 83-45-34.

³ The coordinates for Channel 269A at Coleman are 43-48-41

and 84-27-57.

⁴ The coordinates for Channel 281A at Sebewaing are 43-39-30 and 83-31-00.

OPTION I

City	Channel No.	
	Present	Proposed
Coleman, Michigan	268A	269A
Sebewaing, Michigan	267A	281A
Tuscola, Michigan	269A	268A

OPTION II

Coleman, Michigan	268A	269A
Sebewaing, Michigan	267A	---
Tuscola, Michigan	269A	268A

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Come Together Ministries, Inc., the licensee of Station WPRJ, Coleman, Michigan, SHALL SHOW CAUSE why the license should not be modified to specify operation on Channel 269A in lieu of Channel 268A.

8. Pursuant to Section 1.87 of the Commission's Rules, Come Together Ministries, Inc., may not later than **March 16, 1995**, file a written statement showing with particularity why the authorization should not be modified as proposed in the *Order to Show Cause*. The Commission may call upon Come Together Ministries, Inc. to furnish additional information. If Come Together Ministries, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Come Together Ministries, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Come Together Ministries, Inc.
5444 N. Coleman Road
Coleman, Michigan 48618

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **March 16, 1995**, and reply comments on or before **March 31, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard M. Riehl, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of

the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.